



STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND GEOTECHNICAL ENGINEER

This **AGREEMENT** is made as of:

January 9, 2007

BETWEEN the State of Montana, acting through its Director, Department of Administration, hereinafter identified as the “**OWNER**”:

*Department of Administration, State of Montana
P.O. Box 200103, 1520 East Sixth Avenue
Helena, MT 59620-0103*

And the **GEOTECHNICAL ENGINEER**:

*[FIRM NAME]
[ADDRESS]
[CITY, STATE, ZIP]
[phone, fax]*

For the following Project:

*[PROJECT NAME]
[AGENCY NAME]
[A/E PROJECT #]*

1 PART 1

1.1 COMPENSATION

- 1.1.1 The Owner shall compensate the Geotechnical Engineer in accordance with the full Terms and Conditions of this Agreement as follows:

SERVICES	AMOUNT
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
	\$0.00
Services Total =	\$0.00
SUPPLEMENTAL SERVICES	AMOUNT
	\$0.00
	\$0.00
Supplemental Services Total =	\$0.00
	AMOUNT
TOTAL SUM FOR ALL SERVICES =	\$0.00

1.2 ENUMERATION OF AGREEMENT

- 1.2.1 This Agreement represents the entire and integrated agreement between the Owner and the Geotechnical Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Geotechnical Engineer. This Agreement is also comprised of the documents listed below (if checked).
- 1.2.2 Owner’s Preliminary Project Program; ☐
- 1.2.3 Other documents enumerated as follows: ☐
- 1.2.3.1 [List other documents, if any, forming part of this Agreement]
- 1.2.4 Special terms and conditions that modify this Agreement are as follows: ☐
- 1.2.4.1 [List special terms and conditions]

1.3 PROJECT TEAM

- 1.3.1 The Owner:
- 1.3.1.1 Design Project Manager is: [Name]
[Phone]
[email]
- 1.3.1.2 Construction Project Manager is: [Name]
[Phone]

- [email]
- 1.3.1.3 Agency point of contact is:

[Name]

[Phone]

[email]
- 1.3.1.4 The Owner's Project Manager (respective to the phase of the Project) shall be authorized to act on the Owner's behalf with respect to all aspects of the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Geotechnical Engineer's services.
- 1.3.1.5 The Agency may be comprised of multiple groups or individuals. The Geotechnical Engineer shall be aware that the Agency is not able to bind the Owner and shall communicate and coordinate with the Owner's Project Manager in all instances regarding the Project, Project Program, Project Schedule, Project Budget, communication, transfers of information, scheduling meetings, and any Agency requests.
- 1.3.1.6 The Geotechnical Engineer shall communicate with the Agency through the Owner's Project Manager unless given permission by the Owner to communicate and coordinate directly with the Agency.
- 1.3.2 The Geotechnical Engineer:

1.3.2.1 Designated Representative is:

[Name]

[Discipline]

[Phone]

[email]

1.3.2.2 The Geotechnical Engineer's Designated Representative shall be authorized to act on the Geotechnical Engineer's behalf with respect to the Project and to bind the Geotechnical Engineer and the Geotechnical Engineer's consultants.
- 1.3.3 Consultants retained at the Geotechnical Engineer's expense are:

1.3.3.1 [Firm Name]

[Name]

[Discipline]

[Phone]

[email]

1.3.3.2 [Firm Name]

[Name]

[Discipline]

[Phone]

[email]

1.4 **GENERAL TERMS AND CONDITIONS**

- 1.4.1 The Owner and Geotechnical Engineer shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project Team.
- 1.4.2 Licensing Requirements. By signature on this Agreement, the declaration is made by the Geotechnical Engineer is professionally qualified, registered, and licensed to practice in the State of Montana. In accordance with Montana law, the Geotechnical Engineer shall sign and stamp all Documents.
- 1.4.3 The Geotechnical Engineer shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Geotechnical Engineer shall, without additional compensation, correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services.
- 1.4.4 The Owner's review, approval, acceptance, or payment for services shall not be interpreted or construed to operate as a waiver of any rights or cause for action arising out of the Geotechnical Engineer's performance of services under this Agreement. The Geotechnical Engineer shall remain liable to the Owner as allowed by law for any and all costs and/or damages caused by the Geotechnical Engineer's negligent performance of any of the services furnished under this Agreement.
- 1.4.5 Rights & Remedies. The rights and remedies of the Owner allowed by law are in addition to any rights and remedies provided in this Agreement.
- 1.4.6 Relationship. The relationship of the Geotechnical Engineer to the Owner under this Agreement is that of an Independent Contractor. The Geotechnical Engineer (or the Geotechnical Engineer's consultants) is not an employee of the Owner, is not carrying out the regular business of the Owner, and is not subject to the same employment regulations as applicable to employees of the Owner. Each of the parties will be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are

provided by the Owner to the Geotechnical Engineer, the Geotechnical Engineer's employees, or the Geotechnical Engineer's consultants, or the consultants' employees.

1.4.7 Successors and Assigns. The Owner and the Geotechnical Engineer each bind themselves, their partners, successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither the Owner nor the Geotechnical Engineer shall assign or transfer his interest in the Agreement without written consent of the other.

1.4.8 Records and Documentation:

1.4.8.1 The Geotechnical Engineer and the Geotechnical Engineer's consultants shall be aware that all documentation, including electronic correspondence, in the Owner's possession is a public record and the Owner is obligated to make all such records available upon request by any party or individual unless such records meet statutory requirements or Montana Administrative Rules for confidentiality.

1.4.8.2 The Owner shall have access to all records, correspondence, and files of the Geotechnical Engineer, its employees, engineers, and consultants pertaining to the Project. This access shall be continuing and survive the termination of the Contract for either cause or convenience. Such records shall be kept in a generally recognized format for a period of three (3) years from the date of termination of this Agreement or Final Acceptance of the Project by the Owner. All records shall be available to the Owner, Legislative Auditor, and the Legislative Fiscal Analyst or his authorized representative. The Owner does not consider documents, files, and records in the Geotechnical Engineer's possession or the Geotechnical Engineer's consultants' possession to be public records unless determined to be so by law or unless they come into the Owner's possession.

1.4.9 The Geotechnical Engineer warrants that he has not employed or retained any person, partnership, or corporation, other than a bona fide employee or principle owner working for the Geotechnical Engineer to solicit or acquire the Project described in this Agreement.

1.4.10 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Geotechnical Engineer.

1.5 **RESPONSIBILITIES OF THE PARTIES**

1.5.1 Owner Responsibilities:

1.5.1.1 Unless otherwise provided under this Agreement, the Owner shall provide information in a timely manner regarding requirements and parameters of the Project. The Owner shall furnish a preliminary project program setting forth the Owner's objectives, schedule, constraints and criteria, including necessities and relationships, special equipment, systems and site requirements.

1.5.1.2 The Owner shall examine documents submitted by the Geotechnical Engineer and shall render decisions pertaining thereto.

1.5.1.3 The Owner shall furnish the services of consultants other than those designated as part of the Geotechnical Engineer's responsibility or authorize the Geotechnical Engineer to furnish them as a change in service or scope.

1.5.1.4 The Owner shall furnish testing, inspections, and reports as necessary for the Project such as structural, mechanical, chemical, and other laboratory tests, inspections, and reports or authorize the Geotechnical Engineer to furnish them as a change in service or scope.

1.5.1.5 The Owner shall furnish accounting and auditing services as may be necessary for the Project as he may require to ascertain how or for what purposes the Geotechnical Engineer has used the funds paid under the terms of this Agreement.

1.5.1.6 If the Owner observes or otherwise becomes aware of any error, fault, omission, or defect in the Project or non-conformance with the documentation or Plans and Specifications, he shall give prompt notice thereof to the Geotechnical Engineer.

1.5.2 Geotechnical Engineer's Responsibilities:

1.5.2.1 The Geotechnical Engineer's services shall be performed as expeditiously as is consistent with professional skill and care, orderly progress of the Project, and in accordance with the Project Schedule.

1.5.2.2 The Geotechnical Engineer shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law or create the risk of significant harm to the public. The Geotechnical Engineer shall require similar agreements of the Geotechnical Engineer's consultants to maintain the confidentiality of information specifically designated as confidential by the Owner.

1.5.2.3 Except with the Owner's knowledge and express written permission, the Geotechnical Engineer shall not engage in any activity, or accept any employment, other agreement,

interest, or contribution that would reasonably appear to compromise the Geotechnical Engineer's professional judgment with respect to this Project.

1.5.2.4 The Geotechnical Engineer is expressly prohibited from participating in or bidding on any part of the Contract for Construction or multiple construction contracts, if any, let by the Owner.

1.5.2.5 The Geotechnical Engineer shall review laws, codes, and regulations applicable to the Geotechnical Engineer's services. The Geotechnical Engineer shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

1.5.2.6 The Geotechnical Engineer shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Geotechnical Engineer shall provide prompt written notice to the Owner if the Geotechnical Engineer becomes aware of any errors, omissions, or inconsistencies in such services or information.

2 PART 2

2.1 GEOTECHNICAL INVESTIGATION REQUIREMENTS

2.1.1 TIME: Subject to limitations stated in this Agreement, the specified Geotechnical Investigation shall be completed and the drawing(s) and report(s) delivered to the Owner within t calendar days upon the Owner's execution of this Agreement or authorization from the Owner to proceed.

2.1.2 Access and Protection of Property. The Geotechnical Engineer shall contact the Agency for information regarding access to the site and shall take all reasonable precautions to prevent damage to property, visible and concealed, and shall reasonably restore the site to the condition existing prior to the Geotechnical Engineer's entry, including, but not limited to, repair of curbs, sidewalks, lawns and plantings unless otherwise agreed to with the Owner.

2.1.3 Geotechnical Investigation and Reports. Services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, soil corrosion/resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations unless such services are specifically provided by the Owner.

2.1.3.1 Reports and Drawing Requirements. The Geotechnical Engineer shall sign and seal each report and/or drawing and certify to the best of the geotechnical engineer's knowledge, information, and belief that all information thereon is true and accurately shown. Drawings and drawing files shall contain written scale, graphic scale, North arrow (oriented to the top of the sheet), legend of symbols and abbreviations used on the drawing(s), and all dimensions and elevations in English units.

2.1.3.2 Investigation.

2.1.3.2.1 The geotechnical engineer shall perform borings and subsurface investigations in accordance with accepted geotechnical engineering practices and in the quantity and location as coordinated with the Owner, or the Owner's Architect/Engineer, in order to determine the subsurface soil strata, obtain representative samples for laboratory analysis, investigate the in-situ soil conditions, and investigate the subsurface water conditions.

2.1.3.2.2 All samples shall be classified in accordance with ASTM D-2488, "Standard Practice for Description and Identification of Soils."

2.1.3.2.3 Testing shall be performed in accordance with:

2.1.3.2.3.1 Standard Test Method for Penetration Test and Split Barrel Sampling of Soils, ASTM D-1586;

2.1.3.2.3.2 Thin-Walled Tube Sampling of Soils, ASTM D-1587;

2.1.3.2.3.3 Moisture Content Tests, ASTM D-2116;

2.1.3.2.3.4 Atterberg Limits, ASTM D-4318;

2.1.3.2.3.5 Sieve/Grain Size Analysis Tests, ASTM D-422 and C-136;

2.1.3.2.3.6 Consolidation/Swell, ASTM D-2438 and D-4546;

2.1.3.2.3.7 Shear Strength, ASTM D-2850, D-4767, and D-2166;

2.1.3.2.3.8 California bearing ratio, ASTM D 1883;

2.1.3.2.3.9 Proctor, ASTM D-698 and D-1557; and,

2.1.3.2.3.10 Corrosion tests such as resistivity, pH, and sulfates.

2.1.3.2.4 Percolation tests shall be performed in accordance with the Montana Department of Environmental Quality's currently accepted practices and procedures.

2.1.3.2.5 Other methods of investigation may be used upon prior approval of the Owner. Such methods include test pits, rotary borings, hand auger borings, subsurface strata delineation or other generally accepted geophysical methods.

- 2.1.3.3 Reports. Reports shall provide descriptive information of the scope of the investigation describing the tasks and analysis performed along with the following:
- 2.1.3.3.1 Sub-surface investigation. General description of the samples taken, locations, elevations, the testing methods performed, site geology, subsurface soils profiles, and groundwater observations.
- 2.1.3.3.2 Laboratory Investigations. General description of the examinations and classification of tests performed.
- 2.1.3.3.3 Design and Construction Recommendations. General description of the Project to be constructed with loading information obtained from the Owner or the Owner's Architect/Engineer. The geotechnical engineer shall perform a historical search regarding any previous construction on the site. The Report shall provide design criteria and make recommendations for the performance of earthwork, foundations, slabs, pavement, flooring system, and all other geotechnical-related issues for the site and building based upon the loading information and the soil/geological conditions; seismic conditions and considerations; lateral earth pressures; and, site grading, drainage, and fill work; corrosion potential of buried metals and concretes; percolation rates; groundwater and surface water seepage; specification requirements for fill material, base course, concrete, materials testing, and other requirements as appropriate for the type of Project.
- 2.1.3.4 Additional Requirements:
- 2.1.3.4.1

3 PART 3

3.1 OWNERSHIP OF DOCUMENTS

- 3.1.1 All documents developed under this Agreement are and shall become the property of the Owner whether the Project for which they are made is or is not executed. It is understood and agreed that the Owner and the Owner's Architect/Engineer is permitted to reproduce the drawings and distribute the prints in connection with the use or disposition of the property without incurring obligation for additional compensation to the Geotechnical Engineer.
- 3.1.2 The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the Geotechnical Engineer to the Owner upon Substantial Completion of the Project. Such transfer shall not be construed by the Geotechnical Engineer as a grant for usage nor can it be revoked by the Geotechnical Engineer.
- 3.1.3 The Owner agrees to indemnify and hold harmless the Geotechnical Engineer from any and all claims, demands and causes of action of any kind or character arising as a result of reuse of the documents developed under this Agreement.
- 3.1.4 The Owner is restricted from using the Geotechnical Engineer's license seal/stamp in any form or manner as part of any reuse of documents developed under this Agreement. The Geotechnical Engineer may not remove its license seal/stamp from the Contract Documents used to construct the Project but may do so from electronic and hardcopy Record Drawings delivered to the Owner.
- 3.1.5 The Geotechnical Engineer shall have the right to include photographic or artistic representations of the design of the Project among the Geotechnical Engineer's promotional and professional materials. The Geotechnical Engineer shall be given reasonable access to the completed Project to make such representations. However, the Geotechnical Engineer's materials shall not include the Owner's confidential or proprietary information regardless of whether or not the Owner has previously advised the Geotechnical Engineer in writing of the specific information considered by the Owner to be confidential or proprietary.

3.2 DISPUTE RESOLUTION

- 3.2.1 The Owner and Geotechnical Engineer shall endeavor to resolve controversies, claims, disputes, and other matters in question between them through good faith debate, discussion, and negotiating prior to submitting them to mediation, arbitration, or other legal proceeding.
- 3.2.2 During all debate, discussion, negotiation, mediation, and arbitration proceedings, the Geotechnical Engineer shall continue with performance of services in accordance with this Agreement. The Owner shall continue to make payment for services not in dispute in accordance with this Agreement.
- 3.2.3 Any and all controversies, disputes, claims, or other matters between the parties arising out of or related to this Agreement shall be decided and settled in accordance with this Agreement and with the Uniform Arbitration Act, Title 27, Chapter 5 of Montana Code Annotated.
- 3.2.4 City of Helena, Lewis & Clark County, State of Montana, shall be the venue for all mediation and arbitration proceedings unless otherwise agreed upon in writing by both parties. State of Montana law shall govern this Agreement and all dispute resolution and legal proceedings.

- 3.2.5 In no event shall any claim or dispute be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- 3.2.6 Mediation:
- 3.2.6.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. However, the parties may mutually agree in writing to waive mediation and proceed directly to arbitration.
- 3.2.6.2 Request for mediation shall be filed in writing with the other party to the Agreement and the parties shall endeavor to agree upon a mediator and a location for the proceedings. Unless otherwise mutually agreed upon, mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, except Rule M-2 (filing with AAA). Requests for mediation shall not be filed with AAA unless agreed upon by both parties to do so.
- 3.2.6.3 A demand for arbitration shall not be made and no arbitration proceedings may occur until attempt at mediation has failed unless both parties have mutually waived mediation.
- 3.2.6.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in the venue specified in this Agreement.
- 3.2.7 Arbitration:
- 3.2.7.1 Controversies, claims, disputes, or other matters in question between the parties that are not resolved by mediation shall be decided by arbitration. Unless otherwise mutually agreed upon, arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, except Rule A-3 (filing with AAA). Demands for arbitration shall not be filed with AAA unless agreed upon by both parties to do so.
- 3.2.7.2 A demand for arbitration may be made upon conclusion of mediation unless mediation is waived by agreement of the parties to do so.
- 3.2.7.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Geotechnical Engineer, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- 3.2.7.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- 3.2.8 Dispute Between Owner, Owner's Architect/Engineer, and/or Contractor:
- 3.2.8.1 In the event a dispute arises between the Owner, Owner's Architect/Engineer, and/or Contractor, or any other party, whether before, during, or after construction, the Geotechnical Engineer shall advise and consult with the Owner in attempting to resolve the dispute, whether informally or by mediation, arbitration, or other legal proceeding.
- 3.2.8.2 The Geotechnical Engineer will make himself and/or his consultants, agents, and employees available and shall permit inspection of his records by the Owner. In the event that it is ultimately determined that the Geotechnical Engineer did not cause or contribute to the dispute, damages, or expenses alleged, the Geotechnical Engineer shall be reimbursed by the Owner for all costs reasonably incurred upon final resolution of the dispute.
- 3.2.8.3 The Owner, at its sole discretion, may also enjoin the Geotechnical Engineer and/or consolidate any claim or dispute with the Geotechnical Engineer to any dispute between the Owner, Owner's Architect/Engineer, and/or Contractor. This condition is the singular and sole exemption to needing written consent of the Owner, Geotechnical Engineer, and any other party seeking to be joined in a dispute or claim between the Owner, Owner's Architect/Engineer, and/or the Contractor, as defined in the Owner's Agreement with the Architect/Engineer and in the Contract for Construction.

- 3.2.8.4 If there is no formal determination or finding of fault, the Geotechnical Engineer and Owner may negotiate terms for payment unless the Owner suffered loss as a result of the dispute and believes the Geotechnical Engineer was responsible for or contributed to the loss or cause of the dispute. In such event, any such dispute between the Owner and the Geotechnical Engineer shall be subject to resolution per the terms of this Agreement.
- 3.2.8.5 The Owner will not be required to reimburse the Geotechnical Engineer at any time prior to a final determination or resolution of any claim or dispute. In the event the Geotechnical Engineer caused, in whole or in part, the dispute or controversy, the Geotechnical Engineer shall bear his costs for participating in the resolution.

3.3 WAIVER OF CONSEQUENTIAL DAMAGES

The Geotechnical Engineer and the Owner waive all consequential damages against each other that arise as a result any claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages as a result of either party's termination in accordance with this Agreement.

3.4 MISCELLANEOUS PROVISIONS

- 3.4.1 This Agreement shall be governed by the laws of the State of Montana and venue for all proceedings shall be City of Helena, Lewis & Clark County.
- 3.4.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than the date of termination or of Final Acceptance of the Project per the General Conditions of the Contract for Construction.
- 3.4.3 To the extent damages are covered by insurance, the Owner and the Geotechnical Engineer waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.
- 3.4.4 Insurance. The Geotechnical Engineer shall procure and maintain through termination or Final Acceptance of the Project, Workers Compensation Coverage and commercial liability insurance for protection from claims, actions, damages, and liabilities due to or arising out of bodily injury, automobile accidents, personal injury, sickness, disease, death, or other incidents for himself and all his employees and from claims, action, damages, and liability to or destruction of property arising out of services provided under this Agreement.
- 3.4.5 Indemnification and Hold Harmless. The Geotechnical Engineer shall indemnify and hold harmless the State of Montana from and against all damages, claims and liability arising out of the negligent acts, errors, or omissions of the Geotechnical Engineer, its officers, agents, consultants, and employees, including all judgments, awards, losses, expenses, costs and attorneys' fees. The Owner shall indemnify and hold harmless the Geotechnical Engineer from and against all damages, claims and liability arising out of the negligent acts, errors, or omissions of the Owner, its officers, agents, consultants, and employees, including all judgments, awards, losses, expenses, costs and attorneys' fees.
- 3.4.6 Equal Opportunity Employment. The Geotechnical Engineer shall be familiar with and be responsible for and adhere to all Federal and State requirements regarding employment practices. All hiring and other employment practices of the Geotechnical Engineer shall be in accordance with Federal Equal Employment Opportunity laws, requirements and regulations and shall be nondiscriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.
- 3.4.7 Personnel Expenses pertaining to mandatory or customary contributions and benefits related to employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans, and similar contributions are entirely the responsibility of the Geotechnical Engineer.

3.5 TERMINATION OR SUSPESION OF THIS AGREEMENT

- 3.5.1 The Owner or Geotechnical Engineer may terminate this Agreement upon giving written notice to the other that such party has defaulted and failed to fulfill its obligations under this Agreement. The written notice must contain an itemized description and accounting of default and failure. In the event of such default, the Geotechnical Engineer or Owner shall allow ten (10) calendar days for corrective action or submission of a corrective action plan. The ten (10) days shall be based upon the date of receipt of the notice by the other party. Should no satisfactory corrective action be taken or acceptable corrective action plan be provided by the defaulting party, the other shall have right to terminate the Agreement.
- 3.5.2 The Owner may terminate this Agreement without cause or for convenience at any time upon giving written notice to the Geotechnical Engineer. If the Agreement is terminated without cause, the Geotechnical Engineer shall be compensated for all services rendered prior to receiving the written notice.

- 3.5.3 If the Geotechnical Engineer fails to fulfill his obligations and the Agreement is terminated, the Owner may prosecute the Project to completion by contract or other means available. The Geotechnical Engineer shall be liable to the Owner for any and all additional costs incurred due to the Geotechnical Engineer's failure to perform. The rights and remedies available to the Owner provided herein are in addition to any and all other rights and remedies provided by law or equity.
- 3.5.4 If the Owner fails to make payments to the Geotechnical Engineer in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination subject to the written notice provision above or, at the Geotechnical Engineer's option, cause for suspension of performance of services under this Agreement. If the Geotechnical Engineer elects to suspend services, prior to suspension of services, the Geotechnical Engineer shall also give ten (10) days written notice to the Owner. In the event of a suspension of services, the Geotechnical Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. The Geotechnical Engineer shall resume services upon corrective action or submission of a corrective action plan by the Owner.
- 3.5.5 The Geotechnical Engineer cannot terminate this Agreement or suspend services if the Project is suspended or delayed by the Owner. The Owner shall notify the Geotechnical Engineer concerning any suspension or delay and may direct the Geotechnical Engineer to suspend services accordingly.
- 3.5.6 Any and all expenses, termination costs, anticipated overhead and profit, and consequential costs as a result of termination of this Agreement are specifically excluded and shall not be due the Geotechnical Engineer.

3.6 **EXECUTION OF THIS AGREEMENT**

This Agreement entered into as of the day and year first written above:

Geotechnical Engineer:

Signature

Print

Title

Person signing for the Geotechnical Engineer shall be a principle owner in the firm or a corporate officer and be legally able to bind the Geotechnical Engineer to all provisions of this Agreement.

Owner:

STATE OF MONTANA

THOMAS B. O'CONNELL
Administrator, Architecture & Engineering Division
for the DIRECTOR, DEPARTMENT OF ADMINISTRATION

Date